

REMARKS

Claims 1-10 are currently pending in this application with claim 5 amended herein, no new matter has been added.

The office action rejects claim 5 under 35 U.S.C. § 112, second paragraph as indefinite. It appears that in the prior amendment a word was left out leading to the confusion. This word has been properly inserted into claim 5, thus withdrawal of the rejection is requested.

The office action rejects claims 1-4, 6-8 and 10 under 35 U.S.C. § 103(a) as unpatentable over Japanese Patent No. 200027030 to Kei in view of U.S. Patent No. 6,199,054 to Khan. Claims 5 and 9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kei in view of Khan and in further view of U.S. Published Patent Application No. 2002/0128936 to Sako.

With respect to independent claims 1 and 2 it is respectfully submitted that in Khan it is the user (ISP) that must set the billing rate and not the monitoring device as recited in the instant claims. Further, it is uncertain that Khan is even applicable to the instant application as it fails to provide any teaching of a Quality of Service or billing based thereon. As best understood, Khan teaches merely a simple system for billing email but makes no specific mention as to how billing rates are determined other than by the ISP, these billing rates being largely based on the security of the transmission. All that is said is that the ISP may set the billing rates to be fair. Thus as best understood, Khan stands for little more than the concept of billing rates based on security.

In contrast, the instant invention as recited in claims 1 and 2, the billing is set based on the quality of the delivered monitored data stream at the subscriber serving apparatus. Khan does not teach or suggest such a system.

With respect to the rejection of claims 5 and 9 citing Sako, it is respectfully submitted that the billing table described therein is different from the instantly claimed table. In Sako billing is carried out based on a value standard for the provided information (see para. [0006]). The value standard is described as a high or low value for using information which is distinguished by quality and class. (see para. [0021]). Thus, the billing rate is previously determined based on the level of compression, for example, and are irrelevant to the quality of the delivered monitored data stream. In contrast, the amount of billing in claims 5 and 9 is determined based on the quality of the monitored data stream and the billing parameter being associated with the delivery quality of the monitored data as shown in Figs. 7 and 9.

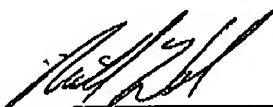
Based on the foregoing, it is submitted that independent claims 1 and 2 patentably distinguish over the relied upon portions of Kei and Khan and are allowable. Further it is submitted that the relied upon portions of Sako do not address these shortcomings. Accordingly, claims 1 and 2 patentably distinguish over the relied upon portions of the cited references and are allowable. Claims 3-10, which depend from one of these allowable base claims are allowable therewith.

Conclusion

In view of the remarks set forth above, it is submitted that this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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